

BRITISH GUIANA

REGULATIONS

Made Under

THE INCOME TAX ORDINANCE,

(Chapter 299)

UNDER SECTION 83(1) OF THE INCOME TAX ORDINANCE IN ACCORDANCE WITH ARTICLE 22 OF THE CONSTITUTION OF BRITISH GUIANA, AND BY VIRTUE AND IN EXERCISE OF ALL POWERS ENABLING HIM IN THAT BEHALF, THE FOLLOWING REGULATIONS HAVE BEEN MADE BY THE GOVERNOR :—

GENERAL

1. These Regulations may be cited as the Income Tax (Deduction of Tax from Emoluments) Regulations, 1962.

2. In these Regulations unless the context otherwise requires —

“code” means any part of the tax tables in which all the amounts of free emoluments for any period have been calculated on the basis of the same total amount for the whole year;

“determined rate” means such rate of deduction of tax as the Commissioner may determine in relation to a person with more than one source of income, for the purpose of securing the collection in any year by means of deductions from emoluments of the person arising from one source of his income, of the total tax payable by him in that year in respect of all sources of his income;

“emoluments” means emoluments to which the Ordinance applies and reference to payment of emoluments includes reference to payment on account of emoluments;

“employer” includes any person making a payment of emoluments;

“free emoluments” in relation to any individual means the appropriate amount of his emoluments which qualifies for relief from income tax;

“income tax month” means every calendar month throughout the year;

“the Ordinance” means the Income Tax Ordinance*;

“reliefs from income tax” includes allowances and deductions;

“taxable emoluments” means emoluments reduced by free emoluments;

“tax tables” means tax tables prepared by the Commissioner.

3. (1) Subject as hereinafter provided every person who carries on or is about to carry on any trade, business, profession or vocation in respect of which he is or will be an employer shall, on or before the 15th day of January, 1963, or within 30 days of the commencement of such trade, business, profession or vocation register with the Commissioner —

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- (a) his name and address;
- (b) the names and addresses of his partners and associates, if any;
- (c) the trade or business name where the trade, business, profession or vocation is carried on under a name or style other than his own name;
- (d) the place and address, if any, where he carries on or intends to carry on his trade, business, profession or vocation;
- (e) the number of employees employed or to be employed:

Provided that this regulation shall be deemed to have been complied with if, in the case of a partnership, the precedent partner as defined in sub-paragraph (3) of section 45 of the Ordinance and in the case of a body of persons the manager or other principal officer, carry out the provisions of this regulation.

(2) The provisions of paragraph (1) of this regulation shall not apply in respect of any person who has filed a return of the income of his trade, business, profession or vocation for the year of assessment and such person shall be exempt from the provisions of this regulation.

4. (1) Where an employee works under the general control and management of a person who is not his immediate employer that person (referred to hereafter in this regulation as the "principal employer") shall be deemed to be the employer for the purposes of these Regulations, and the immediate employer shall furnish the principal employer with such particulars of the employee's emoluments as may be necessary to enable the principal employer to comply with the provisions of these Regulations.

(2) If the employee's emoluments are actually paid to him by the immediate employer —

- (a) the immediate employer shall be notified by the principal employer of the amount of tax to be deducted when the emoluments are paid to the employee, and shall deduct the amount so notified to him accordingly; and
- (b) the principal employer shall make a corresponding deduction on making to the immediate employer the payment out of which the said emoluments will be paid.

5. Anything which is authorised or required by these Regulations to be done by the Commissioner may be done by the Commissioner or members of his staff as he may assign to them.

6. Any notice which is authorised or required to be given, served or issued under these Regulations may be sent by post.

CODING

7. Subject to the provisions of paragraph (3) of regulation 17 of these Regulations every employer on making any payment of emoluments during any year to any person shall deduct tax in accordance with these Regulations by reference to the appropriate code which shall be notified to him by the Commissioner.

8. (1) The appropriate code shall be determined by the Commissioner who for that purpose may have regard to any of the following matters, namely —

- (a) the reliefs from income tax to which the person is entitled for the year in which the code is determined, so far as his title to those reliefs has been established at the time of the determination:

Provided that, where the code is determined before the beginning of the year for which it is to have effect, the Commissioner shall disregard any such relief if he is not satisfied that the person will be entitled to it for that year;

- (b) any income of the person (other than the emoluments in relation to which the appropriate code is being determined), the tax on which for the year for which the code is to have effect will be reduced by any relief;
- (c) any tax overpaid for any previous year which has not been repaid;
- (d) any tax remaining unpaid for any previous year which is not otherwise recovered;
- (e) such other adjustments as may be necessary to secure that, so far as possible, the tax in respect of the person's emoluments for the year for which the code is to have effect shall be deducted from the emoluments paid during that year.

(2) The Commissioner may disregard part or all of any expenses in respect of which the person is entitled to relief from income tax if it is impracticable to take account of all those expenses in determining the appropriate code and where he does so he may direct the employer to disregard an equivalent amount of the person's emoluments in calculating the tax to be deducted when any payment of emoluments is made to the person.

9. (1) The Commissioner may determine that tax shall be deducted at a determined rate from any emoluments if —

- (a) all the reliefs from income tax to which the person is entitled will go to reduce the tax on income of his other than those emoluments;
- or
- (b) the reliefs which will go to reduce the tax on those emoluments are offset by an adjustment in respect of tax remaining unpaid for a previous year.

(2) The Commissioner may determine that no tax shall be deducted from any emoluments if —

- (a) the emoluments will be included in the profits of a trade, profession or business; or
- b) the Commissioner is not satisfied that the emoluments will be chargeable to tax.

(3) Where the Commissioner has determined that tax shall be deducted at a determined rate, or that no tax shall be deducted he shall be deemed to have determined the appropriate code and all the provisions of these Regulations which relate to objections and appeals against the Commissioner's determination, or to deduction of tax by reference to the appropriate code or to the specification of the appropriate code in any return or certificate, shall, with necessary modifications, have effect accordingly.

10. After the Commissioner has determined the appropriate code for any year, he shall, if the code so determined is different from the code in the preceding year, give notice of his determination to the person before the notification of such code is issued to the employer or other person paying the emoluments.

11. (1) If the person is aggrieved by the Commissioner's determination, he may give notice of objection to the Commissioner stating the precise grounds of his objection within thirty days of the date on which the determination was notified to him.

(2) On receipt of the notice of objection the Commissioner may amend his determination by agreement with the person, and in default of such agreement the person, on giving notice to the Commissioner, may appeal to the Board of Review.

(3) The Board of Review on appeal shall determine the appropriate code having regard to the same matters as the Commissioner may have regard to when the appropriate code is determined by him, and subject to the provisions of regulation 12 of these Regulations, their determination shall be final.

(4) Notification of the appropriate code as determined by the Commissioner may be issued to the employer notwithstanding that the Commissioner's determination is the subject of an objection or appeal, and where the notification is so issued the employer shall deduct tax by reference to that code.

12. (1) If the code is found not to be appropriate because the actual circumstances are different from the circumstances by reference to which it was determined by the Commissioner or the Board of Review, the Commissioner may, and if so required by the person, shall, amend the previous determination by reference to the actual circumstances.

(2) After the Commissioner has amended the determination of the code, he shall give notice of the amended determination to the person not later than the date on which the notice under regulation 13 of these Regulations, is issued to the employer.

(3) The provisions of regulation 11 of these Regulations, regarding objections and appeals shall apply in relation to the amended determination as they applied in relation to the previous determination.

13. Where a determination of the Commissioner or the Board of Review is amended after the notification to the employer has been issued, the Commissioner shall give notice to the employer specifying the code appropriate to the person's case under the amended determination, and, on making any payment of emoluments to the person after the receipt of the said notice, the employer shall deduct tax by reference to that code.

14. (1) The employer shall record in such form as may be authorised by the Commissioner, the following particulars regarding every payment of emoluments which he makes to any person, namely—

- (a) the date of payment;
- (b) the code appropriate to the person's case;
- (c) the gross amount of the emoluments;
- (d) the amount of tax, if any, deducted on making the payment.

(2) Where the Commissioner determines that tax shall be deducted at a determined rate from any emoluments or that no tax shall be deducted therefrom,

the employer shall deduct tax at the determined rate or shall deduct no tax, as the case may require.

15. (1) If the employer ceases to employ an employee in respect of whom notification of the appropriate code has been issued to him, he shall forthwith send to the Commissioner a certificate in such form as may be authorised by the Commissioner containing the following particulars, namely—

- (a) the name of the employee;
- (b) any number used to identify the employee;
- (c) the date on which the employment ceased;
- (d) the code appropriate to the employee's case;
- (e) the week or income tax month or other period in which the last payment of emoluments was made to the employee, and the cumulative emoluments at the date of that payment; and
- (f) the cumulative amount of tax deducted at the date.

(2) The employer shall make in such form as may be authorised by the Commissioner two copies of the said certificate and shall deliver them to the employee on the day on which the employment ceases:

(3) Immediately on commencing his next employment the employee shall deliver the two copies of the certificate to his new employer, who shall —

- (a) insert on one copy of the certificate the address of the employee, any number used to identify him and the date on which the employment commenced, and forthwith send that copy to the Commissioner;
- (b) on making any payment of emoluments to the employee deduct tax by reference to the appropriate code in accordance with regulation 14.

(4) If the new employer ceases to employ the employee he shall comply with the provisions of paragraphs (1) and (2) of this regulation as if a notification of the appropriate code in respect of the employee had been issued to him by the Commissioner.

(5) Retirement on pension shall not be treated as a cessation of employment for the purposes of this regulation if the emoluments are paid by the same person both before and after retirement.

16. (1) On the death of an employee in respect of whom a notification of the appropriate code has been issued or deemed to be issued to the employer to whom the provisions of paragraph (3) of regulation 17 of these Regulations apply the employer shall forthwith send to the Commissioner the certificate (relating to cessation of employment) mentioned in paragraph (1) of regulation 15 or the certificate mentioned in paragraph (5) of regulation 17, as the case may require, together with the two copies of the said certificate mentioned in paragraph (2) of the said regulation 15, and shall insert thereon the name and address of the personal representative of the deceased employee if they are known to him.

(2) If any emoluments are paid by the employer after the date of the employee's death in respect of his employment with him, the employer shall, on making any such payment, deduct tax as if the deceased employee was still in his employment at the date of the payment and—

- (a) if the amount of those emoluments and the date on which they will be paid are known to him at the time he completes the certificate mentioned in paragraph (1) of this regulation he shall include thereon the amount of the emoluments, the date on which they will be paid, and the amount of tax which will be deducted; and

- (b) in any other case, he shall indicate on the certificate that a further payment of emoluments will be made by him.

17. (1) If the employer makes any payment of emoluments to an employee (other than a married woman) in respect of whom he has not received a notification of the appropriate code or determined rate of deduction and that payment is equivalent to emoluments at the rate of fifteen dollars or more a week, or in the case of a new employee with other employment, a rate of ten dollars or more a week, and in the case of every employee being a married woman, the employer, on the occasion of the first such payment shall forthwith render a return to the Commissioner giving the name and address of the employee, the date on which his employment commenced and such other particulars as may be necessary to secure the issue of the notification of the appropriate code.

(2) In the case of an employee paid monthly or at longer intervals the references in paragraph (1) of this regulation to a rate of fifteen dollars or more a week, and to a rate of ten dollars or more a week shall be treated as references to a rate of sixty dollars or more a month or forty dollars or more a month respectively.

(3) If the said payment made by the employer to the employee is equivalent to the emoluments at the rate of eighteen dollars or more a week or seventy dollars or more a month, the employer on making it shall also deduct tax in the case of an employee not being a married woman, as if the appropriate code in respect of such employee was Code "23", and in the case of an employee being a married woman, Code "1", and shall continue to do so until a notification of the appropriate code in respect of the employee is issued to him by the Commissioner or under paragraph (2) of regulation 15.

(4) Where paragraph (3) of this regulation applies and the employer ceases to employ the employee before a notification of the appropriate code has been issued to the employer, regulation 15 of these Regulations shall apply as if such notification had been so issued, but subject to the modification that the new employer shall act in accordance with the provisions of this regulation as if no notification had been issued.

(5) This regulation shall not apply where the employee on commencing employment has delivered to his employer copies of a certificate such as is mentioned in regulation 15 of these Regulations.

18. Where the employer makes a payment to or for the benefit of the employee in respect of his income tax, the amount of the emoluments which the employer pays to the employee shall be deemed, for the purpose of deduction of tax under these Regulations to be such a sum as will include the amount assessable on the employee in respect of the payment made by the employer in respect of the employee's income tax.

19. After the end of the year but on or before the prescribed date for the delivery of returns to be delivered to the Commissioner under the provisions of subsections (2), (3) and (4) of section 41 of the Ordinance, the employer shall give every person from whose emoluments he was liable to deduct or withhold tax a certificate in such form as the Commissioner may authorise showing the total amount of the emoluments paid by the employer to such person during the year, the appropriate code and the total tax deducted from the emoluments.

20. (1) Within fourteen days of the end of every income tax month the employer shall pay to the Commissioner all amounts of tax which he was liable under these Regulations to deduct from the emoluments paid by him during that income tax month.

(2) The Commissioner shall give the employer a receipt on the official form for the total amount so paid.

(3) If the amount which the employer is liable to pay to the Commissioner under paragraph (1) of this regulation exceeds the amount actually deducted by him from the emoluments paid during the relevant income tax month, the Commissioner, on being satisfied by the employer that he took reasonable care to comply with the provisions of these Regulations and that the under-deduction was due to an error made in good faith, may direct that the amount of the excess shall be recovered from the person to whom he made payment of the emoluments, and where he so directs, and the employer is unable to recover from such person, the employer shall not be liable to pay the amount of the said excess to the Commissioner, and the Commissioner may authorise repayment of the said excess to the employer.

21. (1) If within fourteen days of the end of any income tax month the employer has paid no tax to the Commissioner under regulation 20 of these Regulations for that income tax month and the Commissioner is unaware of the amount, if any, which the employer is liable so to pay, the Commissioner may give notice to the employer requiring him to render within the time limited in the notice a return showing the name of every person to whom he made any payment of emoluments in the period limited by the notice together with such particulars with regard to each such person as the notice requires being particulars of—

- (a) the code appropriate to the person's case;
- (b) the payments of emoluments made to him during that period; and
- (c) any other matter affecting the calculation of the tax which the employer was liable under these Regulations to deduct during that period.

(2) The Commissioner by reference to the tax tables shall ascertain and certify the amount of tax which the employer is liable to pay to him in respect of the income tax month in question.

(3) The production of the return made by the employer under paragraph (1) of this regulation and of the certificate of the Commissioner under paragraph (2) shall be sufficient evidence that the amount shown in the said certificate is the amount of tax which the employer is liable to pay to the Commissioner in respect of the income tax month in question; and any document purporting to be such a certificate as aforesaid shall be deemed to be such certificate until the contrary is proved.

(4) Where a notice given by the Commissioner under paragraph (1) of this regulation extends to two or more consecutive income tax months, the provisions of these Regulations shall have effect as if the said consecutive income tax months were one income tax month.

(5) A notice may be given by the Commissioner under paragraph (1) of this regulation notwithstanding that an amount of tax has been paid to him by the employer under regulation 20 of these Regulations for any income tax month, if the Commissioner is not satisfied that the amount so paid is the full amount which the employer is liable to pay to him for that month, and the provisions of this regulation shall have effect accordingly.

22. (1) The provisions relating to the recovery of income tax shall apply to the recovery of any amount of tax which an employer is liable under regulation 20 of these Regulations to pay to the Commissioner for any income tax month as if the said amount had been charged on the employer.

(2) Proceedings may be brought for the recovery of the total amount which the employer is liable to pay as aforesaid for any income tax month, without distinguishing the amounts which he is liable to pay in respect of each person and without specifying the person in question, but nothing in this paragraph shall prevent the bringing of separate proceedings for the recovery of each of the several amounts which the employer is liable to pay as aforesaid for any income tax month in respect of the several persons to whom he made payments of emoluments.

(3) A certificate of the Commissioner that any amount of tax such as is mentioned in paragraph (1) of this regulation has not been paid to him or to the best of his knowledge to any other person acting on his behalf shall be sufficient evidence that the sum mentioned in the certificate is unpaid and is due and any document purporting to be such a certificate as aforesaid shall be deemed to be such a certificate until the contrary is proved.

23. (1) In the return to be delivered to the Commissioner under the provisions of subsections (2), (3) and (4) of section 41 of the Ordinance the employer shall furnish in respect of each person to whom he made payments of emoluments the total amount of the emoluments paid by him to each such person during the year, the appropriate code, and the total tax deducted from the emoluments.

(2) In the case of a person who has ceased to be employed the said return shall also show the period during which he was employed.

(3) In the case of an employee taken into employment after the beginning of the year, the said return shall also show the period during which he was employed and the name of his previous employer.

(4) A return shall be made under this regulation in respect of every person in respect of whom a notification has been issued to the employer or to whom being a person other than a married woman the employer has at any time during the year paid emoluments at a rate equivalent to a rate of fifteen dollars or more a week or in the case of such person who has or had other employment ten dollars or more a week, and in the case of every employee being a married woman.

(5) In the case of persons whose emoluments are paid monthly or at longer intervals, the references in the preceding paragraph to a rate of fifteen dollars or more a week, and to a rate of ten dollars or more a week shall be treated as references to a rate of sixty dollars or more a month or forty dollars or more a month respectively.

24. Every employer, when called upon to do so by the Commissioner or any officer authorised by him, shall produce to the Commissioner or that officer for inspection at the employer's premises, or the office of the Commissioner as the employer may be required to do, all wages sheets and other documents and records whatsoever relating to the calculation or payment of the emoluments of his employees or pensioners or the deduction of tax therefrom.

25. If an employer dies, anything which he would have been liable to do under these Regulations shall be done by his personal representative, or, in the case of an employer who paid emoluments on behalf of another person, by the person succeeding him, or if no person succeeds him, the person on whose behalf he paid emoluments.

26. (1) This regulation applies where there has been a change in the employer from whom a person received emoluments in respect of employment in any trade profession or business, or in connection with any property or from whom a pensioner receives any annuity or pension.

(2) Where this regulation applies, the change shall not be treated as a cessation of employment for the purposes of regulation 15 of these Regulations, but in relation to any matter arising after the change, the employer after the change shall be liable to do anything which the employer before the change would have been liable to do under these Regulations if the change had not taken place:

Provided that the employer after the change shall not be liable for the payment of any tax which was deductible from emoluments paid to the employee or pensioner before the change took place.

ASSESSMENT AND DIRECT COLLECTION

27. (1) Income Tax in respect of emoluments may be assessed and charged by the Commissioner, who for that purpose may exercise all the powers under the Ordinance.

(2) All the emoluments and other income of a person may be included in one assessment.

28. The Commissioner may give notice to the employer requiring him to render a return of any emoluments paid by him to any person for any year being emoluments which were not paid to the person until after the end of that year and and any such return shall be rendered to the Commissioner within the time limited by the notice.

29. (1) If the tax payable under the assessment exceeds the total tax deducted from any person's emoluments during the year, being the basis period of the year of assessment, the excess shall be payable by such person to the Commissioner within thirty days after service of a notice of assessment under section 56 of the Ordinance.

(2) Any tax which is payable to the Commissioner by any such person may be recovered in accordance with the provisions of the Ordinance.

30. If the tax payable under the assessment is less than the tax deducted from any person's emoluments during the year being the basis period of the year of assessment the Commissioner shall repay the difference to such person in accordance with the provisions of section 73A of the Ordinance.

31. For the purpose of determining the amount of any excess or difference as aforesaid, any necessary adjustment shall be made to the aforesaid total tax in respect of—

(a) any tax which the employer was liable to deduct from the person's emoluments but failed so to deduct having regard to whether the Commissioner

has or has not directed that the tax shall be recovered from such person;
and

- (b) any tax overpaid or remaining unpaid for any year.

Made this 19th day of September, 1962.

R. F. A. GREY,
Governor.